CF0000061487

(9)

Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR (M.P)

Criminal Appeal No. 156 of 1997

APPELLANT
IN JAIL

: Ramesh Chandra Dehari, S/o Sharad Chandra Dehari, aged about 25 years, Residence of Village Sahabi, Thana Naktidul Distt. Sambalpur.

VERSUS

RESPONDENT

: State of M.P. through S.O. Raipur.

APPEAL UNDER SECTION 374 CR. P. C.

10429
2837
Filed on 2.97
by Shri S.K.Khare
..... Advocate

(23)

Division Bench: Hon. Shri Justice L.C. Bhadoo &
Hon. Shri Justice Dhirendra Mishra,

Criminal Appeal No. 1560 of 1997

APPELLANT Ramesh Chandra Dehari

Versus

RESPONDENT State of M.P.

Smt. Indira Tripathi counsel for the appellant.
Shri G.K. Beriwal Additional Public Prosecutor for the State.

JUDGMENT

(Delivered on 31st-1-2006)

Per Dhirendra Mishra, J

The appellant has preferred this appeal against the judgment of conviction and order of sentence dated 15.07.1997 passed by Sessions Judge, Raipur in Sessions Trial No. 85/96 by which the appellant has been convicted under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life.

2. Case of the prosecution is that on 19.10.1995 accused who is engaged in trade of clothes brought the deceased Vidyadhar from village-Sahebi to Raipur on the promise that he would engage him in the business of loudspeaker and light etc. However, just 2-3 days thereafter he returned to his village alone and on enquiry he denied that he had taken Vidyadhar with him. On 08.11.1995 one Haribandhu Maharana lodged a missing report of Vidyadhar in police station Nektideul. On 23.10.1995 one Suresh Kumar Gahloud, the owner of Ranjit Hotel lodged a report in police station, city kotwali, Raipur to the effect that two persons stayed in room No. 10 of the said Hotel on 20.10.1995 and one of them left the Hotel. He also mentioned in the report that room No. 10 was locked from outside and foul smell was emanating from that room. On receiving

(24)

this information Station House Officer, City Kotwali reached the Hotel, got opened room No. 10 after breaking the lock and found that a dead body was lying on the bed. Merg intimation was recorded and spot map etc.were prepared. Inquest of the dead body was also conducted. Officers of the Forensic Science Laboratory were called. The photographs of the place of incident and also of the dead body were taken. Photographs of the foot prints appearing on the blood in the Room No.10 were also taken and the articles which were present in the room and the bloodstained clothes were seized. Wrist watch of the deceased was also seized. Thereafter, dead body was sent for postmortem examination and after postmortem examination it was buried. Brother and father of the deceased namely Ramchandra Maharana and Haribandhu Maharana after reading in a Oriya newspaper that some unidentified dead body has been seized from Ranjit Hotel, Raipur, they came to Raipur and identified the body to be of Vidyadhar on the basis of photographs of the deceased. Dead body was exhumed from the grave and on the basis of wrist watch and wearing apparels Ramchandra Maharana confirmed that the body so seized was of his brother Vidyadhar. Accused was arrested, his footprints were measured and photographed and then the same were sent to Forensic Science Laboratory for comparison. On comparison they resembled with the footprints which appeared in the room No. 10 of the Hotel- Ranjit. The writing of the accused was also compared with the entries in the Hotel register which were made by the occupants of room No.10 of the said Hotel on 20.10.1995. Identification parade was conducted and in the said identification parade owner of the Hotel namely Suresh Kumar Gahloud and its employee Shiv Kumar Verma correctly identified the accused. During investigation police also collected the entry dated 18.10.1995 of the bank account of the deceased when he had withdrawn Rs.8,000/- from the bank and a sum of Rs.2,000/- was seized from one Keshavram Agrawal on 22.10.1995 which was

paid by the accused towards the cloths purchased by him from his shop and thereafter charge sheet was filed.

3. The concerned Magistrate committed the case to the Court of Sessions Judge. The Sessions Judge framed the charge under Section 302 of the IPC. The accused/appellant abjured the guilt. Learned Sessions Judge, convicted the accused/appellant by recording the following findings;

a) That body found in room No. 10 of Hotel Ranjit on 23.10.1995 was of Vidyadhar.

b) That Vidyadhar was last seen alive in the company of the appellant on 20.10.1995 by Suresh Gahloud and Shiv Kuamr Verma, P.W.18 and P.W.19 respectively.

c) That entries dated 20.10.1995 made in the Hotel register were found to be in the handwriting of accused/appellant vide Ex.P-31 and P-31-A. From the entries dated 11.05.1994 made in the register of Hotel Ranjit, it is clear that Rameshchandra Dehare, aged 23 years, took room No. 7 (P-37) were also found to be in the handwriting of the accused/appellant. Entries dated 12.01.1995 of the same Hotel vide Ex.P-39 were also found to be in the handwriting of the present appellant.

d) That the specimen handwriting of the accused was obtained and the same were sent along with the entries for comparison by the handwriting expert (P.W. 26) and the handwriting expert opined that all the handwritings tallied with the specimen handwriting of the accused and they were found to be of one and the same person.

e) That the photographs of the footprints formed on blood at the place of occurrence i.e. Room No.10 of Hotel Ranjit tallied with the footprints of the appellant as per report of P-13 given by Dr. Yogesh Shukla (P.W.23) and on the basis of the above evidence the circumstance of the deceased being last seen in the company of accused/appellant has been found to be proved.

f) That the other circumstance relied by the trial Court that the deceased Vidyadhar had withdrawn a sum of Rs.8,000/- from his bank account and thus on the date of incident he was having Rs. 8,000/- or more and the accused had motive to obtain the same and under these circumstances, the appellant has been held guilty.

g) That the other circumstance relied by the prosecution that on 19.10.1995 the appellant took the deceased from village-Sahebi to Raipur and P.W. 22 Vaidhyanath saw the deceased and the appellant together at Redakhol Bus Stand taking tea, has been disbelieved by the trial Court.

4. Learned counsel for the appellant submits that the circumstances relied upon by the prosecution are not of such a clinching nature on the basis of which the appellant could be convicted. It is argued that the Court below has committed an error of fact by recording a finding that the prosecution has established the identity of the deceased. Referring to the statement of P.W. 14 Umesh Satpathi, witness of Panchanama of inquest report (P-24) it is argued that the dead body was not recognizable. He also referred to the statement of P.W.8 Dr. Arvind Nerulwar who conducted autopsy on the body of the deceased and argued that dead body was at the advanced stage of decomposition and therefore, it was not possible for

anyone to recognize it. It is further argued that Haribandhu Maharana had lodged the missing report on 08.11.1995 stating that deceased Vidyadhar had gone on 19.10.1995 and did not return to his house. Thus the missing report lodged by Haribandhu Maharana belies the case of the prosecution that they came to Raipur after reading the news in Oriya newspaper on 06.11.1995 about the recovery of a dead body from hotel room. It is submitted that had they made enquiry after reading the newspaper, there was no occasion for them to lodge the missing report on 08.11.1995 i.e. two days after reading the news in a Oriya newspaper. It is further argued that the Court below has considered the footprint of the accused being tallied with the footprint found in the Hotel room, ignoring the statement of senior scientific officer Dr. Yogesh Sharma (P.W. 23) who has categorically stated in paragraph 23 of his evidence that there is possibility of similar footprints of two persons. It is argued that the motive attributed to the appellant that he committed the offence for obtaining Rs. 8,000/- is absolutely improbable and thus, the circumstances relied upon by the Court below to hold the appellant guilty is bad on facts as on law.

5. On the other hand, learned counsel for the respondent/State supported the impugned judgment of conviction and sentence imposed on the appellant.

6. We have heard learned counsel for both the parties and perused the material available on record.

7. It is a settled law that the circumstances from which conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt and totally inconsistent with the innocence. The Supreme Court placing reliance on its earlier judgments in the matter of *Hukum Singh Vs. State of Rajasthan* reported in *(1977) 2*

SCC 99, in the matter of *Eradu Vs. State of Hyderabad* reported in *AIR 1956 SC 316*, in the matte of *Earabhadrappa Vs. State of Karnataka* reported in *(1983) 2 SCC 330* and in the matter of *C.Chenga Reddy Vs. State of A.P.* reported in *(1996) 10 SCC 193* has held in the matter of **State of M.P. Vs. Sanjay Rai** reported in **(2004) 10 SCC 570** that all the circumstances should be complete and there should be no gap left in the chain of evidence and the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.

8. Thus in the light of the above settled law it is to be examined that whether the circumstances relied upon by the trial Court and for drawing the conclusion of the guilt has been fully proved and whether the circumstances so proved are complete and no gap is left in the chain of evidence and further that whether the circumstances established are consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence?

9. From the evidence available on record the circumstances which are established are that;

I) On 19.10.1995 the deceased left his village-Sahebi for an unknown destination and did not return thereafter. Missing report was given on 08.11.1995 in police station-Naktideul (P-79).

II) Two persons occupied room No. 10 of Hotel Ranjit on 20.10.1995 after making entry in the Hotel register (P-30, 31, 31-A). On 23.10.1995 P.W. 17 Suresh Gahloud, the proprietor of Ranjit Hotel informed the police vide Ex.P-26 that one of the occupants of the room No. 10 had left the Hotel on 21.10.1995 after locking the room from outside and foul smell emanated therefrom.

III) Police reached Hotel broke open the lock after preparing Panchanama before the witnesses, called the officer from the Forensic Science Laboratory and photography of the spot including the footprints which were found on the spot on the blood was done by the photographer of the Forensic Science Laboratory. Panchanama of the spot as well as of the dead body was prepared, articles present over the dead body were seized and the photograph of the body was also taken. Thereafter, the body was sent for postmortem examination. Dehati Nalishi (Ex.P-74) was registered and after registering the offence the dead body was buried.

IV) Ramchandra Naktul arrived from Balangir (Orissa) on 11.11.1995 and enquired about the dead body of oriya person which was found in Ranjit Hotel by the police identified the photographs of Ex.P-21 as of deceased Vidyadhar. He also handed over the identity card of Vidyadhar issued by the Election Commission of India and on the basis of the photograph affixed over the identity card, identification was done by Suresh Gahloud and Shiv Kumar Verma vide Ex.P-15 i.e. the identification memo.

V) On the basis of information given by Vaidhyanath, Ramchandra Maharana and Haribandhu Maharana the appellant was called for interrogation in police station-Naktiduel on 12.11.1995 and on his memorandum certain articles were seized.

VI) Specimen handwriting of the appellant was obtained which was sent for comparison to the handwriting expert along with entries dated 20.10.1995, 12.01.1995 and 11.05.1994 made in the Hotel register.

VII) P.W. 26 Mahendra Narayan Pandey sent his report P-69 and 70 and gave his opinion that handwriting in the questioned document Q-1 to Q-14, tallies with the specimen document of S-1 to S-46 and they have been written by one and the same person.

VIII) Photographs of the footprints formed on the blood in room No. 10 was sent with the specimen footprints of the appellant for comparison to the F.S.L., Raipur and P.W.23 Yogesh Sharma, senior scientific officer vide his report of P-39 opined that footprints of P-42-A and P-41-A are similar.

IX) Test identification parade was conducted by P.W.20 Gulzar Mohammad Ansari, Naib Tehsildar in Central Jail, Raipur after mixing the appellant with seven other persons and Suresh Kumar Gahloud and Shiv Kumar Verma of Ranjit Hotel correctly identified the appellant. Memo of identification parade is Ex.P-38.

10. All the aforesaid circumstances have been duly proved by the prosecution witnesses and the evidence of witnesses remained unshaken during cross-examination. However, counsel for the appellant does not dispute that the death of the deceased namely Vidhyadhar was homicidal in nature. Even otherwise, from the perusal of the post mortem report (Ex.P.17) cause of death was coma due to head injury. Thus, in these circumstances the only thing to be seen is whether the prosecution has proved its case as per the circumstances against the appellant or not.

11. Learned counsel for the appellant tried to discredit the test identification parade on the ground that at the time of identification police personnel were also present, but taking into consideration that the identification parade was done in the Jail by the

Executive Magistrate and further considering the statements of P.W. 18 and P.W. 19, the identification stands duly proved.

12. Thus on the basis of aforesaid discussions, it is held that the prosecution has proved the circumstances that the dead body found in a room No. 10 of Hotel Ranjit was of deceased Vidyadhar and the deceased was last seen alive in the company of appellant on 20.10.1995 in Hotel Ranjit by P.W. 18 and P.W. 19 and thereafter dead body of the deceased was found in room No. 10 of the said Hotel on 23.10.1995.

13. Now the second question for adjudication is whether the circumstances so established are consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence or not. The fact that appellant and the deceased are residents of Orissa in the same locality and were known to each other, the fact that appellant was last seen alive with the deceased on 20.10.1995, the appellant made entries in Hotel register with fake name, that appellant had earlier stayed in the same Hotel some one and half year back, that entries in the Hotel register on all the three occasions tally with the handwriting of the deceased, that specimen photographs of the deceased tallied with the footprints available in the room, are of such clinching circumstances which form a complete chain leaving no gap whatsoever unerringly pointing towards the guilt of accused. The defence was unable to provide any alternative hypothesis which may suggest the innocence of the accused/appellant in the aforesaid offence.

14. Thus on the basis of aforesaid analysis, we are of the considered opinion that the Court below had on the basis of circumstantial evidence on record rightly held the appellant guilty of the above offence and we do not find any reason to interfere with the findings so recorded by the trial Court, accordingly, the appeal being devoid of any substance is dismissed.

Sd/-
L.C. BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge